

Advisory Task Force on Remote Access to and Privacy of Electronic Court Records

<http://www.in.gov/judiciary/admin/3389.htm>

Indiana State Library, History Reference Room

315 W. Ohio Street

Indianapolis, Indiana

September 2, 2016

12:00 – 2:00 P.M.

MINUTES

Attendance: *Chair:* Hon. Loretta H. Rush. *Members:* Clerk Debra Walker, Clerk Christa Coffey, Jon Laramore, Melissa Avery, Rep. David Ober, Hon. Peggy Lohorn, Prof. Fred Cate, Mary Willis, Christine Hayes Hickey, David Powell, Lilia Judson. *Designee:* Ann Sutton (for Larry Landis). *Ex Officio:* Hon. Steven H. David, Hon. Paul Mathias. *Staff:* Justin Forkner. *Absent:* Kenneth Falk, Stephen Key, Larry Landis, Kelly McBride, Rep. Sharon Negele, Prof. Joel Schumm, Gary Secrest.

Meeting Summary: The Task Force received an update on statewide e-filing efforts and a demonstration of online e-filing user and training guides. The Task Force then discussed whether public online access to orders and/or filings should be made available for non-confidential case types, and future steps for the Task Force.

The following votes and/or action items were taken:

- the Task Force voted to recommend allowing online public access to orders/judgments in the Estate Miscellaneous (EM), Estate Unsupervised (EU), Miscellaneous (MI), Reciprocal Support (RS), and Court Business Record (CB) case types;
- the Task Force voted to defer consideration of allowing online public access to orders/judgments in the Juvenile Paternity (JP), Domestic Relation (DR), Estate Supervised (ES), Trust (TR), and Miscellaneous Criminal (MC) case types until subsequent Task Force meetings, after online public access to other case types has been implemented and assessed; and
- the Task Force voted to recommend denying public online access in the Guardianship (GU) case type.

I. Welcome

The meeting began at 12:04 p.m. Chief Justice Rush thanked the members for attending and for all their hard work through the course of the Task Force's existence. A motion to approve the minutes from the July 29 meeting was made, seconded, and approved.

II. Progress Reports and Demonstrations

A. E-Filing update – Mary DePrez and Bob Rath

Mary DePrez provided an update of e-filing statistics across Indiana. As of August 31, there were 6,800 e-filing users, 2,675 e-filing attorneys, 3,946 attorneys enrolled in e-service, and over 145,000 electronic filings. She noted a spike in e-filing statistics from July and August, likely due to appellate e-filing. Eight counties had mandatory e-filing in at least some case types, seven counties were now allowing e-filing for subsequent filings, and the Court's e-filing implementation schedule now projects counties mandating e-filing out through January of 2018.

Bob Rath then demonstrated several user and training guides available through the Court's webpage, providing instruction on critical e-filing functions such as adding attorneys to the public service list and adding service contacts.

Chief Justice Rush spoke about how ambitious the e-filing process had been, and she noted there had been no major complaints from the public, practitioners, or the bench. Christine Hayes Hickey asked if the Court could send notices when the e-filing webpage was updated; not just that the page had been updated, but identifying specifically when things were added and what was added.

III. Issues for Discussion and Recommendation

A. Review of Task Force Recommendations for Online Access – Justin Forkner

Justin Forkner reviewed the prior votes of the Task Force. The Chief Justice said that the Task Force would continue with voting on providing online public access to orders/judgments in the remaining case types. Lilia Judson said that orders would have to be "designated" as final somehow, in those case types where the Task Force voted only to allow access to final orders/judgments, and Mary Willis noted that in many cases judges do two final documents – an order/judgment and then a separate document with the supporting findings and conclusions. Clerk Coffey said that even with using the "final" designation in Odyssey, the system still displays them all as just "orders."

B. Online access (cont.) –final orders/judgments in remaining case types

The Task Force discussed Juvenile Paternity (JP) and Domestic Relations (DR) cases. Mary DePrez said that there were 15,982 JP cases filed in 2015, all of which can include a number of individual orders. The Task Force discussed the potential for unintended consequences in posting all of these orders, including significant privacy issues; even redacting the information, the individuals involved might be identifiable.

Judge Mathias said this would be an opportunity for training by the bench and bar to alleviate some of these concerns. Justice Rush suggested deferring consideration of JP and DR cases until the second phase of public online access implementation. Justice David

said that in the interim, Task Force members should consider in the next series of meetings what a public CCS/docket entry might look like in these sorts of cases.

The Task Force then voted to defer consideration of allowing online public access to orders/judgments in Juvenile Paternity (JP) and Domestic Relation (DR) case types until subsequent Task Force meetings, after online public access to other case types has been implemented and assessed. Ten members voted to defer, two voted to outright deny public online access to orders/judgments in these case types, and no-one voted to allow public online access.

The Task Force then discussed the estate case types: Estate Supervised (ES), Estate Unsupervised (EU), and Estate Miscellaneous (EM). Mary Willis explained that ES cases are those where court supervision is required for the administration of the estate. EU cases do not require court intervention, and EM cases tend to be small estates. Justice David explained that orders in all of these case types would generally include property distribution information, financial information, and can be controversial particularly in ES cases. The Task Force decided to address the case types individually.

The Task Force first voted, 12-0, to recommend allowing online public access to orders/judgments in the Estate Miscellaneous (EM) case type.

The Task Force then voted, 11-1, to recommend allowing online public access to orders/judgments in the Estate Unsupervised (EU) case type. Jon Laramore voted to deny online access.

The Task Force then voted to defer consideration of allowing online public access to orders/judgments in the Estate Supervised (ES) case type. Seven members voted to defer, five members voted to recommend allowing online public access.

The Task Force then discussed the Guardianship (GU) case type. The Chief Justice pointed out that the Guardianship Registry is already online and rolled out to over thirty counties, showing approximately 4,700 active cases—but without confidential information. It shows name, date of birth, guardian name, issue date, active status, county, and case name.

The Task Force then voted to recommend denying online public access to orders/judgments in the Guardianship (GU) case type. Eight members voted to recommend denying access and four voted to defer consideration until after implementation of the first phase of online public access.

The Task Force then discussed the Miscellaneous (MI) case type. These typically include name changes, hardship driver's licenses requests, and other smaller items. The Task Force voted, 12-0, to recommend allowing online public access to orders/judgments in the Miscellaneous (MI) case type.

The Task Force then discussed the Reciprocal Support (RS) case type. Mary Willis said that these were typically ERISA claims, but without parenting/custody issues. They were strictly related to the amount of money owed under those cases,

and uncontroversial. The Task Force voted, 12-0, to recommend allowing online public access to orders/judgments in the Reciprocal Support (RS) case type.

The Task Force next discussed the Trust (TR) case type. The Task Force noted there were many types of different trusts, and might include a lot of information about what is or is not being paid out of the corpus of the trust and can be long-term cases, including confidential information and trustee fees. Judge Mathias said the cases were similar to ES cases, on steroids. Mary DePrez said there were 455 filed in Indiana last year. The Task Force discussed whether the inclusion of financial information in a case type should be the dividing line between online public access or not, or if the line should be information that puts a person at risk.

The Task Force voted, unanimously, to defer consideration of allowing online public access to orders/judgments in the Trust (TR) case type until subsequent Task Force meetings, after online public access to other case types has been implemented and assessed.

The Task Force then considered the Miscellaneous Criminal (MC) case type. Dave Powell said that the Supreme Court's Records Management Committee was looking into a recommendation made by the Indiana Prosecuting Attorney's Council about pre-charge criminal filings and whether they should be considered confidential—a determination that would take this case type out of consideration for public online access. The Task Force voted, unanimously, to defer consideration of allowing online access to orders/judgments in the Miscellaneous Criminal (MC) case type until subsequent Task Force meetings, after online public access to other case types has been implemented and assessed or the matter has been more fully considered by the Supreme Court's Records Management Committee.

The Task Force finally discussed the Court Business Record (CB) case type. Mary Willis said these were mostly internal court operations information, like senior judge appointments, pro temp judge appointments, local rules, and general court matters. The Task Force voted, unanimously, to recommend allowing online public access to orders/judgments in the Court Business Record (CB) case type.

C. Report to Records Management Committee, Justice David, and Judge Mathias

The Chief Justice noted that the report to the Records Management Committee, Justice David, and Judge Mathias, would be drafted shortly and then submitted to the Task Force members for their review.

D. Recommendations on future meetings; interest in participating

The Chief Justice and Justice David again thanked the Task Force members for their participation. The Chief Justice said that the second phase of the Task Force would likely focus on whether to allow public online access to any or all of the pleadings in non-

confidential case types, and asked the Task Force members for additional items to be considered.

The Chief Justice also asked the Task Force members to consider additional constituencies that should be invited to attend. Jon Laramore suggested a member of the probate bar. The Chief Justice said she would be contacting the members individually by email to gauge interest in participating for another year, but asked members to continue talking to their own groups. She noted a \$3.8M shortfall in filing fees, but that the Court was seeking additional funding in the next budget cycle to fund the Task Force's recommendations along with further expansion of the integrated case management system and other INCITE applications such as the Protective Order Registry, Guardianship Registry, and E-Ticketing.

V. Adjournment

The meeting adjourned at 1:26 p.m.